

Order Below Exh.6 and Exh.12 In H.R.P.Suit No.70/2021

Shri K. K. Patel, Learned Advocate for the plaintiff.

Shri H. R. Kachhi, Learned Advocate for the defendants.

CORAM :- A. P. Goswami, (JUDGE)

- 1 The plaintiff has filed the present suit alongwith the present application to get temporary injunction against the defendants.

- 2 The brief facts of the plaintiff's case are as under:-
The plaintiff is tenant of the suit property described in para-1 of the plaint and the defendants are owner of the said property. The plaintiff is contended that, initially his father Edy Pascal had taken the suit premises on rent from the father of the defendant no.1 to carry out fabrication business and after the sad demised of plaintiff's father the plaintiff has been carrying out the fabrication and engineering work in the suit premises and paid the monthly rent of Rs.300/- with municipal tax Rs.75/- to the predecessor of the defendant and after the sad demised of father of the defendant no.1 the plaintiff is paying the rent to the defendants. The plaintiff has further contended that, the suit premises is very old and in dilapidated condition and it requires for the repairing/renovation work therefore the plaintiff has carrying out

repairing/renovation work in the suit premises after getting oral consent of the defendant no.1 but the defendant no.2 has quarreled with the plaintiff and called the police and trying to stop the repairing/renovation work by police pressure. The plaintiff has further contended that, the plaintiff is regularly paying the rent to the defendants and as per oral consent of the defendant no.1 the plaintiff has carried out repairing/renovation work but the defendant no.2 has forcibly stopped the repairing/renovation work and trying to take the possession of the suit premises and if the defendants will be succeed in his bad intention then the plaintiff will suffer huge loss in his business. The plaintiff has prima facie case and balance of convenience is also in favour of the plaintiff. And if the relief as claimed by the plaintiff is granted then the defendants would not be suffered but the relief as claimed is granted against the plaintiff then the plaintiff will suffer greater loss which cannot be compensated in terms of money. Therefore, the present application has been filed by the plaintiff and prayed for the relief as per para-7 of the plaint against the defendants.

- 3 The plaintiff has moved the application for carrying out repairing/renovation work vide exh.12 and thereby contended that, the shed of the suit premises is in

dilapidated condition and iron sheet is rusted and shutter is broken therefore the plaintiff has taken oral consent of the defendant no.1 to carry out repairing/renovation work but the defendant no.2 has quarreled with the plaintiff and tried to stop the repairing/renovation work of the suit premises. Therefore the plaintiff has filed the present application vide exh.12 and prayed to give permission to carry out necessary repairing/renovation work in the suit premises and install the new iron sheet instead of old one and replacement of the shutters with new ones.

- 4 That on service of the summons, the defendants have appeared through their Learned Advocate and filed reply vide Exh.14 wherein, the defendants have categorically denied almost all the facts of the plaintiff's suit as well as present application and further stated that, the plaintiff's suit is barred by the non-joinder and mis-joinder of parties, delay, laches and acquisitions. The defendants have further contended that, the real facts is that, the defendants and other co-owners have filed one Civil Suit No.375/2021 before the Hon'ble City Civil Court against the present plaintiff to restrain him for transferring, assigning or subletting the suit premises to third party and also not to carry out any type of construction work in the suit premises. Moreover the plaintiff is never tenant of the defendants and there

was no any rent agreement executed between then hence there is no any relationship of the tenant and landlord between the parties. There is no any description or shed number mentioned in the receipt produced by the plaintiff and looking to the Gumasthadhara certificate, the name of the organization is shown as Phoenix Engineering which is registered for the commercial purpose whereas the rent receipts produced by the plaintiff is in the name of S. P. Fabricators and certificate issued by the Shop and Establishment Department and tax bill are in the name of Phoenix Engineering hence both are different. The S.P. Fabricators is open place and only plaintiff's shed is adjacent to the defendant's shed no.5 hence he want to illegally grab the shed of the defendant forcibly and to harass the defendant he has filed the present suit which is not legally binding under any circumstances. And the present suit is deserved to be dismissed because the relationship of tenant and landlord does not exists between the parties.

- 5 The defendant has filed his reply against the repairing/renovation application filed by the plaintiff at Exh.12 and thereby categorically denied almost all the facts of the plaintiff's application and contended that, it is necessary to take permission of the Municipal Corporation to carrying out repairing/renovation of any property and

plaintiff has not join the Municipal Corporation as a party therefore this application is not maintainable. The plaintiff has prayed the same temporary relief claimed in the present application and application at Exh.12, which he has asked from, as permanent relief and in these circumstances, if this application is allowed then the plaintiff will get the final relief at the interim stage. Therefore the defendant has prayed to reject the plaintiff's application at Exh.12 with compensatory cost.

- 6 The plaintiff has filed his written arguments at Exh.28 and thereby contended the plaintiff has filed the suit and present application against the defendants for getting permanent injunction. The plaintiff has stated in his written argument that, he has voluntarily stopped the repairing renovation work during the proceeding of the suit and filed one application on dtd.20/07/2021 for seeking permission for the repairing/renovation work before the Hon'ble Court and also filed written argument on dtd.20/12/2021 which is considered as a part of written argument of the interim injunction application. The plaintiff has been occupying the suit premises with a tenancy right since long years and after the oral consent of the defendant no.1 the plaintiff has carrying out repairing/renovation work and during that period the defendants have created obstacle and trying to take the possession forcibly. Therefore the plaintiff has filed the present injunction and renovation application and

prayed to allow both the applications. The learned advocate for the plaintiff has relied upon the citations which are as under:-

- (1) 1995 (2) G.L.R. page.1320, Smt. Laxmiben Mavjibhai Vs. Shankarbhai Mulubhai.
- (2) A. I. R. 1072 Allahabad page-25 Moinnudin Vs. Mohammadimmam
- (3) A.I.R. 1987 Supreme Court page -617 Omprakash Vs. Amarsingh.

7 The defendants have filed their written argument at Exh.29 and thereby contended that, the present defendants have filed one Civil Suit No.375/2021 before the Hon'ble City Civil Court and in that suit also the injunction application is still pending and thenafter the plaintiff has filed the present suit. The plaintiff has produced the rent receipt of the Anil Metals Work and survey no.321 of the suit property is not mentioned anywhere in that rent receipts and also not mentioned the shed number and the name of Anil Metals Works as per rent receipt is not seen as a defendant in the present suit therefore there is no any relationship of landlord and tenant between the parties. The defendant has carried out court commission in Civil Suit no.375/2021 filed before the Hon'ble City Civil Court wherein the court commission report of the suit property being Shed no.5, Anil Metals Compound, Odhav sim survey no.321/2, T.P. Scheme No.3, Final Plot No.138/2 being tenement no.0429-

27-0281-0001-R has carried out. On the other side the plaintiff has not shown the shed number of the suit property but he has produced the tax bill wherein the tenement no.0429-27-0231-0001-R is mentioned which is contrary to the court commission report carried out in Civil Suit no.375/2021 and the board in the name of Phoenix Engineers All Kind of Fabrication Works is mentioned in the court commission report whereas the plaintiff has filed the present suit in the name of S. P. Fabricators and produced the rent receipts in the name of S. P. Fabricators and the board of Phoenix Engineering of a different firm is spot. The plaintiff has not mentioned the exact four direction of the suit property. The plaintiff has not produced any cogent evidence to prove that he is a tenant of the suit property. The plaintiff has filed a separate application for seeking permission to carry out repairing/renovation work but he has not mentioned that what kind of repairing work he would be carried out in the shed. Moreover, to carry out repairing/renovation work it is necessary to take permission of the GIDC and also necessary to pass the plan before the AMC but he has not done so. Therefore the plaintiff is not entitled for the relief of carry out repairing renovation work hence both the applications deserved to be dismissed with compensatory cost.

- 8 Heard the learned advocates for the parties and perused the paper and documentary evidence on record. That from the

record, it clearly transpires that the plaintiff has asked relief that the defendants or their men, servants, agent and accomplices etc are restrained from taking forcibly and illegal possession of the suit premises from the plaintiff and also prayed to restrain them from any type of interference and hindrance at the time of carrying out repairing/renovation work in the suit premises. That from these relief, if we see the relief claimed in the present application and application at Exh.12, the plaintiff has asked the same temporary relief, which he has asked from, as permanent relief and in these circumstances, if this application is allowed then the plaintiff will get the final relief at the interim stage. As my this view is also supported by the judgment of Hon'ble High Court of Gujarat reported in 1997 (2) GLH page-767 Jamnagar-Rajkot Gramin Bank Officer Association and another Vs. Jamnagar-Rajkot Gramin Bank and another. Moreover the plaintiff has himself admitted in his written argument at Exh.28, para no.2 that, he has voluntarily stopped the repairing/renovation work of the suit premises therefore the dispute raised by the plaintiff that the defendant no.2 has quarreled with the plaintiff and trying to stop the repairing/renovation work is baseless. Hence, I find that there is no prima facie case in favour of plaintiff. Balance of convenience is not in favour of the plaintiff and the plaintiff will not suffer any injury which can not be compensated in terms of money. Hence, as per above facts and

circumstances I pass the following order in the interest of justice.

:- ORDER -:

1. Both the applications at Exh.6 and Exh.12 of plaintiff is hereby rejected.
2. The ad interim relief granted, if any, at the time of institution of the suit, is hereby discontinued from today.
3. No order as to cost.

Signed and pronounced in the open Court today i.e. 07 day of March, 2022.

Ahmedabad.

Date:07/03/2022.

(Ashokpuri Prempuri Goswami)

Chamber Judge,

UIC No.GJ00897

Small Cause Court

Ahmedabad.